

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

LUCELENIA GONZALEZ,
Plaintiff

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No. 3:16-cv-00925

(Judge Kane)
(Magistrate Judge Saporito)

NANCY A. BERRYHILL,
Acting Commissioner of
Social Security,¹
Defendant

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On May 18, 2016, Plaintiff Lucelenia Gonzalez filed a complaint against Defendant Carolyn W. Colvin, then-Commissioner of Social Security Administration, appealing the Commissioner's final decision and the denial of her application for disability insurance benefits under Sections 216(i) and 223(d) of the Social Security Act, 42 U.S.C. §§ 416(i), 423(d). (Doc. Nos. 1; 11-2 at 2, 34.) Specifically, Plaintiff challenged the Administrative Law Judge Michelle Wolfe's ("ALJ") residual functional capacity ("RFC") assessment and that contended that the ALJ erred by not imposing limits on the "operation of foot and leg controls involving Plaintiff's right knee and leg in formulating the RFC and in questioning the vocational expert" ("VE"). (Doc. Nos. 11-2 at 34; 12 at 2-3.)

Before the Court is the May 22, 2017 Report and Recommendation of Magistrate Judge Saporito, recommending that the Commissioner's final decision be vacated and the above-captioned action be remanded to clarify Plaintiff's "impairments and limitations." (Doc. No. 15.) Magistrate Judge Saporito reasons that the ALJ "failed to present a hypothetical question to

¹ The Court notes that since the institution of this action, Carolyn W. Colvin has been succeeded as Acting Commissioner of the Social Security Administration by Nancy A. Berryhill. Pursuant to Federal Rule of Civil Procedure 25(d), a public officer's successor is automatically substituted as a party in an action brought against the public officer in an official capacity.

the VE that properly identified all of [Plaintiff] Gonzalez's impairments and limitations." (Id. at 17.) Specifically, Magistrate Judge Saporito finds in the Report and Recommendation that the "ALJ did not include any limitations with regard to pushing and pulling using the lower extremities when she assessed [Plaintiff] Gonzalez's RFC, nor did she impose any limitations when presenting the hypothetical to the VE." (Id. at 19.)

Defendant Acting Commissioner of Social Security Nancy A. Berryhill has objected to the Report and Recommendation on the basis that substantial evidence supports the ALJ's assessment of Plaintiff's RFC. (Doc. No. 16 at 2.) The Court finds that Magistrate Judge Saporito correctly and comprehensively addressed the substance of Defendant's objection in the Report and Recommendation. (Doc. No. 15.) Thus, the Court will not write separately to address Defendant's objection.

ACCORDINGLY, upon independent review of the record and applicable law, on this 3rd day of August 2017, **IT IS ORDERED THAT:**

1. Magistrate Judge Saporito's Report and Recommendation (Doc. No. 15), is **ADOPTED**;
2. The Commissioner's final decision denying Plaintiff's application for disability insurance benefits is **VACATED**, and the above-captioned action is **REMANDED** for further proceedings as follows:
 - a. Plaintiff's request for an award of benefits is **DENIED**;
 - b. Plaintiff's request for a new administrative hearing is **GRANTED** to clarify her "impairments and limitations when presenting the hypothetical questions and for further review of the medical records;"
3. The Clerk of Court is directed to enter final judgment in Plaintiff's favor, and against the Commissioner; and

4. The Clerk of Court is directed to **CLOSE** the above-captioned case.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania